

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
DETROIT DIVISION**

CASE NO.: 2:24-cv-13427

MARCO VERCH,

Plaintiff,

v.

FENDT BUILDERS SUPPLY INC.,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT

(INJUNCTIVE RELIEF DEMANDED)

Plaintiff MARCO VERCH by and through his undersigned counsel, brings this Complaint against Defendant FENDT BUILDERS SUPPLY INC. for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff MARCO VERCH (“Verch”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Verch's original copyrighted Work of authorship.

2. Verch is a photographer from Cologne, Germany. He has been working as a photographer for many years and enjoys taking pictures of scenery

from his travels, sporting events, food, flowers, cars, drones and more. He also takes photos for advertisements and fundraising campaigns.

3. Defendant FENDT BUILDERS SUPPLY INC. (“Fendt”) is a full-service masonry supplier and concrete products manufacturer with locations in Farmington Hills and Ann Arbor, Michigan. At all times relevant herein, Fendt owned and operated the facebook page “Fendt Products” located at the internet URL www.facebook.com/FendtProducts (the “FB Page”).

4. Verch alleges that Fendt copied Verch’s copyrighted Work from the internet in order to advertise, market and promote its business activities. Fendt committed the violations alleged in connection with Defendant's business for purposes of advertising and promoting sales to the public in the course and scope of the Fendt's business.

JURISDICTION AND VENUE

5. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Fendt is subject to personal jurisdiction in Michigan.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Fendt

engaged in infringement in this district, Fendt resides in this district, and Fendt is subject to personal jurisdiction in this district.

DEFENDANT

9. Fendt Builders Supply Inc. is a Michigan Corporation, with its principal place of business at 22005 Gill Road, Farmington Hills, MI, 48332, and can be served by serving its Registered Agent, Alan D. Fendt, at the same address.

THE COPYRIGHTED WORK AT ISSUE

10. In 2019, Liliya Kirovychko created the photograph, as a work-for-hire for Verch, entitled “Beautiful-Christmas-background-with-spices-and-blurred-glow-garland,” which is shown below and referred to herein as the “Work”.



11. Verch registered the Work with the Register of Copyrights on February 25, 2020 as part of a group registration. The Group Registration was assigned registration number VA 2-197-105. The Certificate of Registration is attached hereto as **Exhibit 1**.

12. Verch makes his work available via CCNull, a German website similar to Flickr, and a Creative Commons 2.0 License.

13. For a party to be allowed to use a Creative Commons 2.0 License, (“CC 2.0”), it is conditioned upon the prospective licensee of the Work attributing the Work to the original owner/claimant of the Work.

14. In part, the CC 2.0 license states, “You must give appropriate credit, provide a link to the license and indicate if changes were made.”¹

15. At all relevant times Verch was the owner of the copyrighted Work at issue in this case.

INFRINGEMENT BY FENDT

16. Fendt has never been licensed to use the Work at issue in this action for any purpose.

17. On a date after the Work at issue in this action was created, but prior to the filing of this action, Fendt copied the Work.

¹ <https://creativecommons.org/licenses/by/2.0/>

18. On or about August 12, 2024, Verch discovered the unauthorized use of his Work on the FB Page in a post dated December 11, 2023.

19. Fendt copied Verch's copyrighted Work without Verch's permission.

20. After Fendt copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its masonry and concrete business.

21. Fendt copied and distributed Verch's copyrighted Work in connection with Defendant's business for purposes of advertising and promoting Defendant's business, and in the course and scope of advertising and selling products and services.

22. Fendt committed copyright infringement of the Work as evidenced by the documents attached hereto as **Exhibit 2**.

23. Verch never gave Fendt permission or authority to copy, distribute or display the Work at issue in this case.

24. Verch notified Fendt of the allegations set forth herein on October 9, 2024. To date, the parties have failed to resolve this matter.

25. When Fendt copied and displayed the Work at issue in this case, Fendt failed to provide attribution as required by the CC 2.0 license.

26. Fendt's failure to attribute is a violation of 17 U.S.C. 1202(b) as removal of copyright management information.

27. Verch never gave Fendt permission or authority to remove copyright management information from the Work at issue in this case.

COUNT I
COPYRIGHT INFRINGEMENT

28. Verch incorporates the allegations of paragraphs 1 through 277 of this Complaint as if fully set forth herein.

29. Verch owns a valid copyright in the Work at issue in this case.

30. Verch registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

31. Fendt copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Verch's authorization in violation of 17 U.S.C. § 501.

32. Fendt performed the acts alleged in the course and scope of its business activities.

33. Defendant's acts were willful.

34. Verch has been damaged.

35. The harm caused to Verch has been irreparable.

COUNT II
REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION

36. Verch incorporates the allegations of paragraphs 1 through 277 of this Complaint as if fully set forth herein.

37. The Work at issue in this case contains copyright management information (“CMI”).

38. The Work at issue in this case requires attribution and contains copyright management information (“CMI”)

39. Fendt knowingly and with the intent to enable or facilitate copyright infringement, removed CMI from the Work at issue in this action in violation of 17 U.S.C. § 1202(b).

40. Fendt committed these acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal infringement of Verch's rights in the Work at issue in this action protected under the Copyright Act.

41. Fendt caused, directed and authorized others commit these acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal infringement of Verch's rights in the Work at issue in this action protected under the Copyright Act.

42. Verch has been damaged.

43. The harm caused to Verch has been irreparable.

WHEREFORE, the Plaintiff MARCO VERCH prays for judgment against the Defendant FENDT BUILDERS SUPPLY INC. that:

a. Fendt and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and

permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. §§ 501, 1203;

b. Fendt be required to pay Verch his actual damages and Defendant's profits attributable to the infringement, or, at Verch's election, statutory damages, as provided in 17 U.S.C. §§ 504, 1203;

c. Verch be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Verch be awarded pre- and post-judgment interest; and

e. Verch be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Verch hereby demands a trial by jury of all issues so triable.

Dated: December 20, 2024

Respectfully submitted,

/s/ J. Campbell Miller

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